

City of Miami

*City Hall
3500 Pan American Drive
Miami, FL 33133
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Meeting Minutes

Tuesday, February 21, 2012

10:00 AM

Commission Chambers

Civil Service Board

*Miguel M. de la O, Chairperson
Joseph Kaplan, Chief Examiner
Michael T. Dames, Board Member
Sean Moy, Board Member
Gerald Silverman, Board Member*

PLEDGE OF ALLEGIANCE

The meeting was called to order at 10:06 a.m. The roll call for the Board Members at the commencement of the meeting was as follows:

Present: Chief Examiner Kaplan, Chairperson de la O, Member Dames, Member Silverman and Member Moy

A. APPROVING THE MINUTES OF:

Regular Meeting of January 24, 2012.

Motion by Member Silverman, seconded by Chief Examiner Kaplan, to APPROVE. PASSED by the following vote.

Aye: Kaplan, Silverman, de la O, Dames and Moy

B. PERSONNEL MATTERS**B.1**

Copy of a memorandum from Pete Chircut, Interim Finance Director, requesting to extend the probationary period of Jose Jair Espinosa, Supervisor of Payrolls, for three (3) additional months beyond March 15, 2012. (DISCUSSION)

Chairman de la O asked Mr. Espinosa if he was aware that the Finance Director requested to extend his probationary period and if so, did he have an objection to the extension.

Jose Jair Espinosa, Supervisor of Payrolls, responded that he was made aware that his probationary period was being extended, and he had no objection; however, he wished to comment on the matter.

Following comments made by Mr. Espinosa and Board discussion, the Board entered a motion to grant the department's request to extend Mr. Espinosa's probationary period an additional three months beyond March 15, 2012 which resulted as follows:

Motion by Member Silverman, seconded by Member Moy, that this matter be APPROVED. PASSED by the following vote.

Aye: Kaplan, Silverman, de la O, Dames and Moy

B.2

Copy of a memorandum from Pete Chircut, Interim Finance Director, requesting to extend the probationary period of Barbara Gray, Chief Accountant, for three (3) additional months beyond March 28, 2012. (DISCUSSION)

Chairman de la O asked Ms. Gray if she was aware that the Finance Director requested to extend her probationary period and if so, did she have an objection to the extension.

Barbara Gray, Chief Accountant, responded that she was made aware that her probationary period was being extended and that she had no objection.

Member Moy asked Ms. Gray if she wished to share with the Board any comments concerning the extension of her probationary period. Ms. Gray responded in the affirmative.

Following comments made by Ms. Gray and Board discussion, the Board entered a motion to grant the department's request to extend Mr. Gray's probationary period an additional three months beyond March 28, 2012 which resulted as follows:

Motion by Member Silverman, seconded by Member Moy, that this matter be APPROVED. PASSED by the following vote.

Aye: Kaplan, Silverman, de la O, Dames and Moy

C. MILITARY LEAVES OF ABSENCE

- C.1** Gabino Soto, Firefighter, requests retroactive military leave duty without pay from July 26, 2011 through August 30, 2012. Copy of Orders attached. (DISCUSSION)

Motion by Member Silverman, seconded by Chief Examiner Kaplan, that this matter be APPROVED. PASSED by the following vote.

Aye: Kaplan, Silverman, de la O, Dames and Moy

D. DISCIPLINARY MATTERS

- D.1** Copy of a memorandum from the City Manager remanding back to the Board the appeal hearing on behalf of Favian Rodriguez, Police Officer, relative to his 40-hour suspension, effective January 3, 2009. (NOTIFICATION)

The Appeal hearing will be scheduled in accordance with the Civil Service Board Procedures.

NOTIFIED

- D.2** Copy of a memorandum from the City Manager accepting the Report from the Board and advising no further action is needed in the matter of Steven Wolf, former C.I.P. Investigator, relative to his Whistleblower Hearing, pursuant to Florida Statute 112.3187. (NOTIFICATION)

NOTIFIED

- D.3** Copy of a memorandum from the City Manager accepting the Report from the Board and advising no further action is needed concerning the Grievance hearing on behalf of Richard Brioso, former Assistant to the Director of GSA, pursuant to Rule 16.2 Complaint by Employee, alleging a violation of 8.13. (NOTIFICATION)

NOTIFIED

- D.4** Copy of a memorandum from the City Manager accepting the Report from the Board and advising no further action is needed concerning the Grievance Hearing on behalf of Louis A. Brennan, Firefighter, pursuant to Civil Service Rule 16.2- Complaint by Employee, alleging a violation of Civil Service Rule 6.4. (NOTIFICATION)

NOTIFIED

- D.5** Copy of a memorandum from the City Manager accepting the Report from the Board and rejecting the recommendations concerning the Grievance hearing on behalf of Olga M. Zamora, Sr. Project Representative, pursuant to Rule 16.2, alleging a violation of Rules 6.1, 6.2 and 6.3. (NOTIFICATION)
- Members Dames and Moy expressed their discontent with the City Manager's decision to reject the Board's recommendations considering a unanimous vote was rendered in this case. Chairman de la O responded that is the way the City Charter is set up. He went on to say that (in accordance with Rule 16) the Board submits [its report] to the City Manager and it is the City Manager's job to remedy the situation (if necessary). Chairman de la O further stated if there is something that can be done, that would be left up to Ms. Zamora and her attorney to do whatever it is they need to do. He went on to say that he did not know what the remedy would be but it is out of the Board's hands at this point.*

NOTIFIED : NO ACTION TAKEN

- D.6** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Yatha Legrand, Police Officer, of her 30-hour suspension, effective January 25, 2012 and a copy of a request to appeal from Yatha Legrand. A hearing will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

RECEIVED AND FILED

- D.7** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying John Giordano, Police Officer, of his 20-hour suspension, effective February 1, 2012. (NOTIFICATION)

NOTIFIED

- D.8** Copy of a letter from Keith Carswell, Director, Department of Solid Waste, notifying Devell King, Waste Collection Operator II, of his 3-day suspension, effective February 7, 2012 and a copy of a request to appeal from Devel King. A hearing of appeal will be scheduled in accordance with Civil Service Rules & Regulations. (NOTIFICATION)

RECEIVED AND FILED

- D.9** Copy of a memorandum from Chief Manuel Orosa, Director, Department of Police, notifying Frenel Cenat, Police Officer, of his 10-hr forfeiture, effective February 14, 2012. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

- E.1** Copy of Findings of Fact in the Appeal Hearing of Meredith Nation, Procurement Supervisor (former), relative to her termination, effective March 23, 2011. (DISCUSSION)

The Executive Secretary informed the Board that she received a request from Ms. Nation's attorney (Teri Guttman-Valdes) to carry this matter over to the second meeting

in March for Board consideration.

DEFERRED : Rescheduled to the March 20, 2012 meeting.

E.2

Copy of a Request to Continue from Michael Braverman, Attorney, on behalf of Ansonia Chatfield, Emergency Dispatcher, relative to her 120-hour suspension, effective July 7, 2011. (DISCUSSION)

Hearing of appeal is scheduled for today.

Attorney Braverman stated that his client has two cases (120-hour suspension and Termination) scheduled for today; however, he is asking to continue the hearing pertaining to Ms. Chatfield's 120-hour suspension. He went on to say that the basis for his continuance request is that he has a court matter in Broward that requires his attention.

Chairman de la O asked Attorney Braverman if he would be proceeding with Ms. Chatfield's termination case today. Attorney Braverman responded in the affirmative.

Chairman de la O asked opposing counsel if she objected to the employee's request for a continuance. ACA Richard responded in the negative.

Following discussion, the Board entered a motion to APPROVE the employee's request for a continuance of her hearing to appeal her 120-hour suspension, which resulted as follows:

Motion by Member Silverman, seconded by Member Moy, that this matter be APPROVED. PASSED by the following vote.

Aye: Kaplan, Silverman, de la O, Dames and Moy

E.3

Copy of a Request to Continue from Michael Braverman, Attorney on behalf of Carlos Jimenez, Structural Engineer, relative to his Grievance hearing. (DISCUSSION)

Grievance hearing is scheduled for today.

Attorney Braverman stated that he is asking that this case be continued [on the basis that he has a court matter in Broward that requires his attention.]

Chairman de la O asked opposing counsel if she had an objection to the employee's request for a continuance. ACA Richard responded in the negative. Following discussion, the Board entered a motion to APPROVE the employee's request for a continuance which resulted as follows:

Motion by Member Silverman, seconded by Member Moy, that this matter be APPROVED. PASSED by the following vote.

Aye: Kaplan, Silverman, de la O, Dames and Moy

F. REPORTS

F.1

Pending Hearings as of February 21, 2012. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS**H.1**

Hearing of Appeal on behalf of Shekita Johnson, Emergency Dispatcher, relative to her 8-hour suspension, effective February 8, 2009.

Pending settlement since August 23, 2011.

ACA Richard stated that she and opposing counsel have agreed to settle this matter by restoring the 8 hours of pay, that she lost as a result of the 1-day suspension, back to Ms. Johnson.

Chairman de la O asked Attorney Braverman if he was in agreement with the settlement. Attorney Braverman responded in the affirmative. He went on to say that he hopes the matter is resolved today because it appeared on previous agendas a couple of times before.

Following discussion, the Board entered a motion for a JOINT CONTINUANCE of this case to allow time to prepare the settlement which resulted as follows:

Motion by Member Silverman, seconded by Chief Examiner Kaplan, that this matter be CONTINUED. PASSED by the following vote.

Aye: Kaplan, Silverman, de la O and Moy

No: Dames

NOTE: Ms. Johnson's case will be closed and removed from the Board's docket upon receipt of a written settlement agreement or rescheduled in accordance with the Board's Continuance Policy.

H.2

Grievance Hearing on behalf of Corina S. Esquijarosa, former Sr. Project Representative, pursuant to Rule 16.2, alleging a violation of Rule 12.1, as it concerns her layoff, effective September 23, 2011.

ACA Richard stated that Ms. Esquijarosa is claiming that the department violated Rule 12.1 when she was laid off some time last year so she would like for Ms. Esquijarosa to make a proffer as to what the (12) witnesses will testify to, especially since this is a very straight-forward case involving the issue of whether someone with less seniority should have been laid off instead of Ms. Esquijarosa.

Chairman de la O asked Ms. Esquijarosa to tell the Board how Rule 12.1 was violated. Ms. Esquijarosa responded that she believes Rule 12.1 which deals with layoffs was not properly followed. Chairman de la O asked Ms. Esquijarosa in what way was Rule 12.1 not followed. Ms. Esquijarosa responded that she intends to prove this matter during the hearing. Chairman de la O urged Ms. Esquijarosa to tell the Board now how she believes Rule 12.1 was not followed, so that the Board could understand the parameters of her case. Ms. Esquijarosa responded that she believed the procedures for abolishing a position were not followed as per the Administrative Policy Manual (APM) and Civil Service Rules, and she did not receive notice. Chairman de la O asked where the Rule is for abolishing a position. Ms. Esquijarosa responded there is no such rule or procedures for abolishing a position. Chairman de la O asked Ms. Esquijarosa where then does she look to determine whether the procedures are followed. Ms. Esquijarosa responded that is something to be determined through the list of witnesses that she subpoenaed. She went on to say she believes there are procedures outlined in the APM for abolishing a position but they just have not been followed. Ms. Esquijarosa read a portion of APM 6-79 in support of her position.

Chairman de la O stated that the Board has limited resources, it is a volunteer Board that meets twice a month and the Board is about to spend all day on either Ms. Esquijarosa's or the case of another employee who was terminated. He went on to say that the Board does not mind spending the time when there is something to be heard but all Ms. Esquijarosa has told the Board is there was a failure to engage the Labor Relations Office early in the process of eliminating a classification which the department is telling him did not happen. Chairman de la O further stated that the Board has to decide how it would spend its resources so if Ms. Esquijarosa does not have a potential claim, he does not see why the Board should spend all day on a case that does not have any merit. He stated that even if all of what Ms. Esquijarosa stated was true, what she said so far does not mean she would prevail, so he needs to know specifically what Ms. Esquijarosa believes was violated.

Member Silverman asked Ms. Esquijarosa if she had the least amount of seniority in her classification of Senior Project Analyst. Ms. Esquijarosa responded in the affirmative. Member Silverman asked Ms. Esquijarosa if he was correct in understanding that it is not her claim that she has more seniority than someone else, rather it is her claim that the City hired someone in an unclassified position performing the same duties that she performed so that person should have been terminated instead of her. Ms. Esquijarosa responded in the affirmative.

ACA Richard stated if the Board decides to hear Ms. Esquijarosa's case, due to time, she would prefer to hear Ms. Chatfield's termination case first since all of her witnesses are present and this is their day off.

Ms. Esquijarosa stated that she respectfully requests to have her case heard today. Chairman de la O stated that the Board will only have time to hear one of the cases since Member Kaplan has to leave at 2:30 p.m.

Following discussion, the Board entered a motion to defer Ms. Esquijarosa's hearing to the March 20, 2012 meeting and list it as the first hearing to be heard on that date. The motion resulted as follows:

Motion by Member Silverman, seconded by Member Dames, that this matter be CONTINUED. PASSED by the following vote.

Aye: Kaplan, Silverman, de la O, Dames and Moy

H.3

Hearing of Appeal on behalf of Ansonia Chatfield, Emergency Dispatcher, relative to her 120-hour suspension, effective July 7, 2011.

The Board took no action on this case because a CONTINUANCE was granted at today's meeting.

CONTINUED

H.4

Hearing of Appeal on behalf of Ansonia Chatfield, Emergency Dispatcher, relative to her Termination, effective October 20, 2011.

The Board entered into the scheduled hearing of appeal on behalf of Ansonia Chatfield, the Appellant.

Assistant City Attorney Richard represented the Department of Police.

Attorney Michael Braverman represented the Appellant.

Both attorneys presented opening statements.

The Rule of Witnesses was invoked and all witnesses were sworn in individually. Witnesses for the Department appeared in the following order:

1. Lawanda Lawson, Emergency Dispatcher, City of Miami, Department of Police. Questions were posed by Board Members Moy, Dames, and Kaplan during the testimony of Lawanda Lawson.

2. Tiffany Jackson, Emergency Dispatcher, City of Miami, Department of Police. Questions were posed by Board Members Moy, Dames, and Kaplan during the testimony of Tiffany Jackson.

3. Shekita Johnson, Emergency Dispatcher, City of Miami, Department of Police. Questions were posed by Board Members Moy and Dames during the testimony of Shekita Johnson.

4. Vania Jean-Baptiste, Emergency Dispatcher Assistant, City of Miami, Department of Police.

5. Cassandra Garcia, Emergency Dispatcher, City of Miami, Department of Police. Questions were posed by Board Members Dames and Kaplan during the testimony of Cassandra Garcia.

The Board took a break and reconvened at 1:42 p.m. to continue with the department's witnesses. Prior to doing so, Chairman de la O stated that staff had a suggestion that made sense to him and he had been talking to some of the participants about it. He went on to say that since Member Kaplan has to leave at 2:30 p.m., it was suggested that the other Board Members could remain to finish the hearing and have Member Kaplan review the testimony on video. Chairman de la O further stated that no votes would be taken until the next meeting (March 6, 2012) so that all of the Board Members could vote at one time. Member Kaplan stated that he did not like the suggestion because that would mean he does not get to question the witnesses.

Chairman de la O asked if anyone else had an objection to the proposal. Attorney Braverman responded in the affirmative. He went on to say that they would prefer to have a full Board to complete the hearing in its entirety even if that meant finishing the hearing at the next meeting. Attorney Braverman further stated that while he does have grievance cases scheduled on March 6, 2012 that deal with layoffs, he does not think they are of the same importance or urgency as Ms. Chatman's termination case.

Chairman de la O stated that since there were objections expressed, the suggestion would not take place. The department's attorney continued with the calling of her witnesses as follows:

6. Angela Glass, Emergency Dispatcher Supervisor, City of Miami, Department of Police.

Following direct and cross examination of the department's witness Ms. Glass, Chairman de la O stated that the Board would end the hearing today with this witness because Member Kaplan has to leave. He went on to say that the Board would reconvene on [the March 6th] meeting date to conclude Ms. Chatfield's case.

HEARD BY THE BOARD: Conclusion of hearing to be held on March 6, 2012.

H.5

Grievance Hearing on behalf of Carlos Jimenez, Structural Engineer, pursuant to Rule 16.2, alleging a violation of Rule 12.1, as it concerns his layoff effective September 23, 2011.

The Board took no action on this case because a CONTINUANCE was granted at today's meeting.

CONTINUED

ADJOURNMENT:

The Chairman called for a motion to ADJOURN which resulted as follows:

Motion by Member Silverman, seconded by Chief Examiner Kaplan, to APPROVE. PASSED by the following vote.

Aye: Kaplan, Silverman, de la O, Dames and Moy

Breaks were taken at 10:51 - 11:00 a.m.; 12:11 - 12:21 p.m.; and 1:29 - 1:42 p.m. The meeting adjourned at 2:40 p.m.

SIGNATURE:

Miguel M. de la O, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary